IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP No.17051 of 2006

Date of Decision: 28.10.2006

Dial Singh

Petitioner

versus

State of Punjab and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE PRITAM PAL

Present: Shri R.K.Sharma, Advocate for the petitioner

Jasbir Singh, J. (Oral)

This writ petition has been filed with a prayer to quash order dated 31.7.2006 (Annexure P/6) and also order dated 9.3.2004 (Annexure P/5).

It is not in dispute that the petitioner was working as a Salesman with respondent No.6. Dispute was raised against him and accordingly, matter was referred to the Arbitrator by the competent authority. The Arbitrator, after recording evidence of the parties and by taking note of admission made by the petitioner, had passed order on 8.10.2002, fastening liability upon the petitioner, regarding the amount, in dispute. Relevant portion of the order reads thus:-

"That Dial Singh has registered the report of theft but during investigation, he admitted that there was no theft but he himself misappropriated the items. Items are in his charge, he is the custodian and responsible for increase and decrease of the same. In case the custodian and responsible admits that he has misappropriated then it amounts to embezzlement. As in this case police after investigation came to the conclusion that there was no theft but salesman of the society has misappropriated the items. News of this also appeared in Punjabi Tribune dated 29.11.1996, photocopy of which is attached. Police had recovered from Dial Singh two tins of ghee, 8 packet ghee, 15 blankets, 30 kg washing soap and 25 packets of Dabri marked tea, photocopy is attached.

Apart from above, Ist party produced hand written dated 16.10.1992, 6.4.1994, 4.6.1994, 6.11.1996 on which signatures of Dial Singh 2nd party are there and from the audit note dated 31.3.1995, 31.3.1996, 31.3.1997, list of essential commodities and stock register essential commodities 96-97 at page 5, 13, 19, 23, 27, 29, 35, 47, 51, 53, 57, 59, 73, 76, 78, 80 (on this signatures of Dial Singh are there), photocopies and photocopy of report of National Insurance Company, Nabha dated 23.12.1996 produced, which are attached with the file.

2nd party did not produced any writing or oral proof they were asked that whether they need some time to say anything more, then they said that they do not want to say anything and not asked for more time and we are satisfied with the time

granted to them. Thereafter proceedings of hearing has been closed.

I, heard the cased on 9.7.02, 19.7.02, 6.8.02, 27.8.02, 10.9.02 and 1.10.02, in the office of the Saholi C.A.S.S. Sh.Harpreet Singh, Advocate, Nabha appeared for Ist party and Sh.Manjit Singh, Senior Advocate Patiala with 2nd party came present at the time of hearing of the case. Arguments of both the parties have been heard carefully. Objections raised by the 2nd party and reply given to the objections by Ist party and after considering the written proofs, I have come to the conclusion that reply given by Ist party are correct and satisfactory and written proofs are correct.

Keeping in view the record produced by the Ist party and proofs, I order that 2nd party pay an amount of principle Rs.35,539.22/-. Interest Rs.2,760.70/- expenses Rs.250/- total Rs.38,550/- to the Ist party alongwith interest @ 17.5% per annum. In case the 2nd party does not pay the above amount in normal way, then the Ist party will have the right to recover the amount by initiating legal proceedings."

The petitioner went in appeal. The appellate authority, without adverting to the merits of the case, on a very technical ground that as the criminal trial was going on against the petitioner, allowed his appeal and the award was set aside. Respondent-Society went in revision, which was allowed by the competent officer, vide order dated 9.3.2004, by specifically holding that civil and criminal procedings can go together. Thereafter, the petitioner filed revision petition, which was dismissed being not maintainable.

After hearing counsel for the parties and having gone through the records of this case, we are of the opinion that the award passed by the Arbitrator is perfectly justified. It is not in dispute that during investigation with regard to FIR recorded for loss caused to the Society, it was found, as a matter of fact, that it was the petitioner, who had embezzled the amount and no theft had actually taken place. In view of findings given by the Arbitrator, we are not inclined to interfere at the instance of the petitioner.

Dismissed.

(Jasbir Singh)
Judge

October 28, 2006 **(Pritam Pal)**
gk **Judge**